Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 34.

THE ANGLO-CALIFORNIAN BANK, Limited, *Appellant*,

vs.

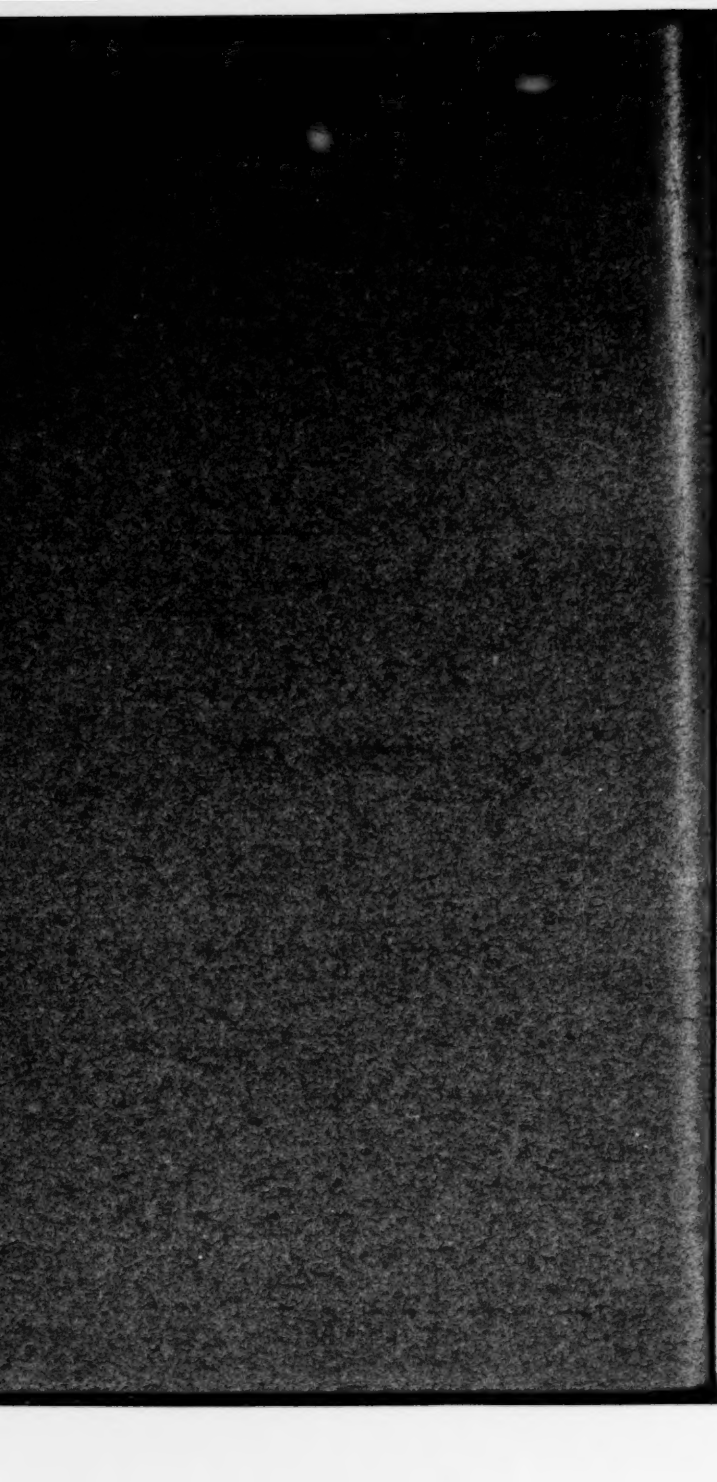
THE SECRETARY OF THE TREASURY, *Appellee*.

Appeal from the United States Circuit Court of Appeals for the Ninth Circuit.

In the Matter of the Petition of the Secretary of the Treasury for Review of a Decision of the Board of the United States General Appraisers, Relative to Certain Tobacco Stem Rolls.

Reply Brief of Appellant as to Jurisdiction Only.

WM. PINKNEY WHYTE,
Counsel for Appellant.



IN THE

Supreme Court of the United States,

OCTOBER TERM, 1899.

No. 31.

THE ANGLO-CALIFORNIAN BANK, LIMITED, *Appellant*,

vs.

THE SECRETARY OF THE TREASURY, *Appellee.*

Appeal from the United States Circuit Court of Appeals for the Ninth Circuit.

In the Matter of the Petition of the Secretary of the Treasury for Review of a Decision of the Board of the United States General Appraisers, Relative to Certain Twenty Steel Rails.

Argument for Appellant as to Jurisdiction Only.

AS TO THE JURISDICTION.

ARGUMENT.

In submitting the original brief on behalf of the appellant it was not deemed necessary to make any argument as to the jurisdiction of this Court in entertaining this appeal.

The counsel for the appellant was under the impression that the officers of the Treasury Department desired the law settled by the highest authority as to the disposition of goods remaining in warehouse over three years and the proper rate of duty to be charged upon their "withdrawal for consumption;" and the United States Circuit Court of Appeals having expressed the opinion that the question involved was of such importance as to require a review of its decision and decree by this Court, any objection as to the jurisdiction, it was believed, was eliminated from consideration.

However, the brief of the Attorney-General, just filed, imposes on the appellant a brief reply to this objection on the part of the government. The suggestion that the petition should have been filed in the name of the United States is clearly correct in regard to some cases, but the case of Benton vs. Woolsey, 12 Peters, 27, to which reference is made, only prescribes a practice to be followed, unless "it is otherwise ordered by Act of Congress."

U. S. Brief, page 6.

But in the case before the Court the procedure is regulated by Act of Congress, approved June 10, 1890, (26 U. S. St. 131,) act known as "Customs Administrative Act of 1890."

Section 15 of the Act of Congress, approved 10th June, 1890, (26th Stat., page 136,) provides:

"That if the owner, importer, consignee or agent of any imported merchandise, or the collector or *the Secretary of the Treasury* shall be dissatisfied with the decision of the board of general appraisers, as provided for in section 14 of this Act, as to the construction of the law and the facts respecting the classification of such merchandise and the rate of duty imposed thereon under such classification, they or either of them may, within thirty days next after such decision, and not afterwards, apply to the Circuit Court of the United States within the district in which the matter arises for a review of the question of law and fact involved in such

decision. Such application shall be made by filing in the office of the clerk of said Circuit Court a concise statement of the errors of law and fact complained of, and a copy of such statement shall be served on the collector, or on the importer, owner, consignee or agent, as the case may be," etc.

By this Act the Secretary of the Treasury, if dissatisfied, is to set the machinery of the judicial tribunals in motion and is to file a concise statement of the errors of law and fact complained of. The law does not provide that he shall file that statement in the name of the United States, and it is questionable whether it was error on the part of the United States District Attorney in filing the petition in the name of the Secretary of the Treasury. Certainly it did not occur to any one in the lower court to make such objection.

However, it is agreed that the United States shall be substituted for the Secretary of the Treasury as petitioner and appellee.

Upon the Question of Jurisdiction.

It is contended that the case at bar is one governed by the same rules as that of the United States vs. American Bell Telephone Co., 159 U. S. 548-552, because in this case, as in that, the "United States are the plaintiffs or petitioners."

That case decides, that—

"The Supreme Court of the United States has jurisdiction, on appeal from the Circuit Court of Appeals, of a suit by the United States to cancel a patent for an invention; it is not a case 'arising under the patent laws' in which the judgment or decree of the Circuit Court of Appeals is final under the Act of March 3, 1891.

"The operation of a statute claimed to restrict appellate jurisdiction must be restrained within narrower limits than its words import, if the Court is satisfied that the literal meaning of its language would extend to cases which the legislature never intended to include in it."

The inquiry there was whether the appellate jurisdiction of the Supreme Court over controversies, in which the United States are parties, has been circumscribed by Congress in the Judiciary Act of March 3, 1891, (26 Stat. 826,) in respect to the rights of appeal, and this Court held that it had not been. It was contended in that case that the appeal should be dismissed for the reason that the case was one arising under the patent laws, as it is here contended, that this case is one arising under the revenue laws. Cases in which the United States are plaintiffs or petitioners in the Circuit Courts are within the appellate jurisdiction of this Court.

It is the fact that the case in the Circuit Court is a suit in which the United States are plaintiffs or petitioners, which gives this Court appellate jurisdiction in spite of the Judiciary Act of March 3, 1891. As in regard to the patent laws, so in regard to revenue cases, there are many cases arising under the Internal Revenue Acts which go to the Circuit Court of Appeals and some in regard to custom duties which take a like direction, but in suits in the Circuit Courts where the United States are plaintiffs or petitioners, the right of appeal is not restricted in revenue cases as it is not in patent cases.

The right of the United States to an appeal to this Court in cases like the one at bar seems to be admitted; but the government maintains here "that the proper construction of section 6 in respect to appeals in revenue cases is that the judgments or decrees of Circuit Courts of Appeals are final in respect to the *importers* only."

It is impossible to reconcile, with the theory of a popular or republican government, the idea that the United States has a right of appeal under section 6 of the Judiciary Act of March 3, 1891, which, it is contended, is absolutely denied to the importer or the people upon whose goods the duty is levied. The legislative department of the government, it is maintained, never intended any such one-sided protection. "Statutes levying duties on citizens and subjects are to be construed most strictly against the government, and in favor of the citi-

zen or subject," and it is contended that Congress never meant to give to the government broader privileges in regard to the right of appeal in cases where the "United States are plaintiffs or petitioners" than the citizen or subject whose rights are involved in such appeals. It seems hardly possible under our Constitution such a condition of things should exist. But if there is a doubt, that doubt should be resolved in favor of the importer.

Hartranft vs. Wiegman, 121 U. S. 609.

In the brief of the Attorney-General it is said "the appeal allowed from the Circuit Court of Appeals to this Court was improperly allowed, and the importers were not advised to apply here in the proper and regular mode for writ of *certiorari.*" Surely the records of this Court disclose the fact that application for *certiorari* was made to this Court at the October Term, 1896, No. 764, and that the motion was denied on 30th of April, 1897.

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No reasons are given for such denials by this Court; but as the case is one which the Circuit Court of Appeals certifies, as raising questions of "such importance as to require a review of the decision and decree by the Supreme Court of the United States," it is not a violent presumption, that the writ of *certiorari* was refused upon the ground that the right of appeal in suits where the United States are plaintiffs or petitioners still exists, even where the collection of the public revenue is concerned.

WM. PINKNEY WHYTE,
Counsel for Appellant.